

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1283/88 198  
~~XXXXXX~~ MP 2087/88 &  
MP 2088/88.

DATE OF DECISION April 21, 1989.

**Shri Vijay Kumar** Petitioner

In person. Advocate for the Petitioners)

## Versus

Union of India & Others Respondents

Shri P.H.Ramchandani, Senior Counsel Advocate for the Respondent(s)  
and Shri A.N.Khanvitkar

**CORAM :**

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A),

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND-12 CAT/86-3-12-86-15,000

h. kumar  
(Kaushal Kumar) 21.4.89  
Member (A)

*Ch*  
(Amitev Banerji)  
Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. 1283/88 alongwith M.P. 2087/88 & 2088/88.

DATE OF DECISION: April 21, 1989.

Vijay Kumar .... Applicant.

v/s.

Union of India &  
Others .... Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.  
Hon'ble Mr. Kaushal Kumar, Member (A).

Applicant in person.

Respondents through Shri P.H. Ramchandani, Sr. Counsel  
and Shri A.N. Khanwilkar, Counsel.

(Judgement of the Bench delivered by  
Hon'ble Mr. Kaushal Kumar, Member).

JUDGEMENT

The applicant belongs to the Maharashtra cadre of the Indian Administrative Service, his year of allotment being 1982, having been appointed to the Service as a direct recruit on the basis of the Civil Services Competitive Examination held in 1981. The applicant was under training for a period of two years from 1.9.1982 to 31.8.1984, after which he was posted in October, 1984 as Leave Reserve Assistant Collector at Osmanabad in Maharashtra. He had different postings in his parent cadre and has also been on leave for long spells. In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the change in his seniority position based on the assessment of his record at the Lal Bahadur Shastri National Academy of Administration, Mussoorie. Whereas on the basis of the competitive examination and merit determined by the UPSC, the applicant was ranked higher to Respondent No.5, as a result of the assessment made at the Academy, he became junior to him.

2. The applicant had secured an aggregate of 1104 marks whereas Respondent No.5 had obtained 1099 marks out of 2050 including the viva voce test marks in the competitive examination/on the basis of which

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he was appointed to the Indian Administrative Service and initially shown senior to Respondent No.5. After completion of the Probationers' Training and the Probationer's Final Examination, 1984, the applicant secured an aggregate of 1425 marks as against an aggregate of 1459 marks secured by Respondent No.5. The break-up of the aggregate marks in respect of the applicant and Respondent No.5 as communicated by the Government of India, Department of Personnel & Administrative Reforms letter dated 26th March, 1985, addressed to the Chief Secretaries of all State Governments (filed as Exhibit 'A' to M.P. No. 2087/88) is given below: -

	<u>Applicant</u>	<u>Respondent No.5</u>
(1) Basic Pol. concepts and Constitution of India	42	40
(2) Basic Eco. Principle & Five Year Plans	34	36
(3) Law	47	47
(4) General Administrative Knowledge	<u>48</u>	<u>42</u>
TOTAL OF (1) to (4)	171	165
(5) Year's Record	<u>150</u>	<u>195</u>
TOTAL OF (1) to (5)	321	360
Competitive Exam. Marks	<u>1104</u>	<u>1099</u>
Grand Total	<u>1425</u>	<u>1459</u>

As a result of the above, the applicant became junior to Respondent No.5.

3. The case of the applicant is that even in the written examination held on completion of the Probationers' Training, he had secured 171 marks as against 165 marks obtained by Respondent No.5 out of 300 and that the awarding of 150 marks to the applicant as against 195 marks to Respondent No.5 out of 300 by the Director of the Academy was not objective; it was arbitrary and mala-fide. It is this assessment which resulted in the change of his seniority vis-a-vis Respondent No.5.

4. In the main O.A. 1283/88, the applicant has sought the following reliefs: -

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" (i) The applicant, therefore, prays, most respectfully that the respondent No.1 & 2 may be directed to produce gradation lists as on 1-1-1983, 1-1-1984, 1-1-1985, 1-1-1986, 1-1-1987, 1-1-1988 and if in these gradation lists, the applicant has been reduced in seniority, the respondents may be further directed to explain this reduction satisfactorily in the eye of law, and, in case, this Honourable Tribunal is satisfied that the reduction is not in accordance with law, which the applicant strongly thinks is not, those gradation list(s) showing the applicant in a position below that of Respondent No.5, may kindly be quashed, and the respondents may be directed to maintain the position as on 1-1-1985.

(ii) In future, the respondents must communicate all gradation lists to the applicant, in a proper manner. "

5. In M.P. 2087/1988, the applicant has prayed for (Exhibit 'A' to the M.P.) quashing of the letter dated 26.2.1985/ issued by the Department of Personnel & Administrative Reforms, Government of India, to the Chief Secretaries of all State Governments (referred to above), forwarding therewith a statement showing the results in order of merit of 142 probationers who were appointed to the Indian Administrative Service on the basis of the result in the Civil Services Examination, 1981. In the M.P., the applicant has further sought a direction to the respondents for re-assessment of his performance in the Academy during the period from 1.9.1982 to 31.5.1983 in accordance with Rule 6 of IAS (Probation) Rules, 1954 and keeping in view the judgement and order of the Supreme Court in Civil Appeal No.3464 of 1987 dated 30.8.1988.

6. In M.P. 2088/1988, the prayer made is for a direction to the respondents not to evict the applicant from room No.101, Maharashtra Sadan, Copernicus Marg, New Delhi where the applicant has been staying since 9.8.1988 for pursuing his cases in the Tribunal and the Hon'ble Supreme Court.

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7. Rule 4 of the IAS (Regulation of Seniority) Rules, 1954 reads as follows: -

"4. Seniority of officers. - (1) The seniority of officers inter-se shall be determined in accordance with the provisions hereinafter contained in this rule.

(1-a) Officers appointed to the Service in accordance with rule 7 of the Recruitment Rules with the same year of allotment, shall be ranked inter se in order of merit which shall be determined in accordance with the aggregate marks obtained by each officer

(a) at the competitive examination;

(b) in respect of the officer's record in the Academy; and

(c) at the Probationer's Final Examination:

Provided that in determining such order of merit, no account shall be taken of marks awarded in any subject in which an officer has failed to satisfy the Director, National Academy of Administration".

At the end of the said rule 4, the following entry is found on page 105 of All India Services Manual Part I:

"Government of India's Decision:

Determination of seniority of an IAS officer is an executive decision and not a judicial or quasi-judicial act. As such an officer is not entitled to demand the reasons on which the decision is based.

(G.I. MHA F. No. 26/28/62-AIS (II) and F. No. 15/5/66-IAS (II)."

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Record in Academy and Final Examination referred/in clauses (b) and (c) of Rule 4 (1-a) have been further defined under Rules 6 and 7 of the IAS (Probation) Rules, 1954 and read as follows: -

"6. Record in Academy. - (1) A probationer under training shall attend such lectures and undergo such tests and exercises as the Director or the

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State Government, as the case may be, may from time to time, direct.

(2) At the end of the period of training the Director shall assess the record in the Academy and in the State of each probationer by awarding him such number of marks out of a maximum of 300 marks as he may, in each case, think fit".

"7. Final Examination. - (1) Every probationer shall, during the course of training appear at a final examination to be conducted by the Director.

(2) The examination shall be conducted by the Director in accordance with such regulations as the Central Government may, in consultation with the State Governments and the Commission from time to time, make.

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8. It is the record in <sup>the</sup> Academy under Rule 6 of the IAS (Probation) Rules which has upset the seniority of the applicant vis-a-vis Respondent No.5. The applicant who argued his case in person contended that sub-rule (2) of Rule 6 cannot be divorced from sub-rule (1) and the assessment has necessarily to be made with reference to the lectures attended and tests and exercises undergone by the probationers and that the Director of Academy could not inject his discretion in the matter of such assessment. He also contended that the rule is justiciable and the Court could go into its vires as also the objectivity of the assessment made under the said rule.

9. We find that sub-rule (1) of Rule 6 has a wide compass and covers within its ambit the assessment of the performance based on lectures, tests and exercises not only in the Academy but also in the States to which the Probationers may be deputed for training. Whereas such an assessment has necessarily to be objective, a certain subjectivity based on the observations and assessment made by the members of the Faculty, including the Director of the Academy, cannot

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be ruled out and the Court would hesitate to substitute its own assessment for that made by the Director of the Academy unless there is incontrovertible evidence of bias or prejudice on the part of the Director. The applicant has impleaded two former Directors of the Academy as Respondents No.3 and 4 and has made certain allegations against Respondent No.3 in para (IV) and Respondent No.4 in para (V) of the O.A. These allegations are trivial and flimsy in nature. A large number of probationers enter the Academy every year fresh from their University career. They are all new to the Director and other members of the Faculty, and their assessment has necessarily to be based on their performance during training in the Academy including field training in the States. In the present case, we do not find any acceptable evidence or sufficient grounds for holding that Respondents No.3 and 4 had developed any prejudice or hostility towards the applicant.

10. The applicant has also challenged the vires of Rule 6 of the IAS (Probation) Rules, 1954 (Record in Academy) as by bestowing uncanalised, unguided, uncontrolled, unfettered, absolute, discretionary power on the Director of the Academy, it offends Article 14 and 16 of the Constitution because the said Rules provide tremendous scope for discrimination, between two probationers, similarly placed, according to the whims, fancies, humour, private opinion etc. and, thereby paves the way for arbitrary patronage and punishment without reference to any principles of reason, justice, fair-play and rule of law. He also contended that since "order of merit" stands determined by the UPSC on the basis of the marks secured at the competitive examination (1800 marks being for the written examination and 250 marks for the interview), there is no scope left for any assessment like the one prescribed in Rule 6 of the IAS (Probation) Rules.

11. We are unable to agree with the contention of the applicant since the Rule in question is applicable to all the probationers at the Academy. It does not envisage application of different yardsticks in case of different probationers. The argument that there is no scope for

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any assessment based on the record in the Academy after the assessment made by the UPSC does not require a moment's consideration for being rejected. Training during probation is an integral part of one's make-up for assessment of suitability for the Service to which he has been allocated and it is the training which a probationer receives during the Foundation Course, the field training etc., which cumulatively build up his potential for facing the various challenges of the Service to which he has been allocated and efficiently discharging the duties assigned to him as a member of the Service. The probationer's training is / corner-stone for the future build-up of the trainee and, therefore, it is not only the successful completion of the training but also the relative performance of the probationers which have to account for determining the final seniority of the probationers. We do not find anything arbitrary in Rule 6 regarding assessment of the record in the Academy.

12. The applicant also relied on the judgement of the Supreme Court in Civil Appeal No.3464 of 1987 filed by him against the judgement delivered by the Bombay Bench of this Tribunal (dated 19.1.1987). The applicant relied upon the following observations made by the Hon'ble Supreme Court in the order dated 30th August, 1988: -

"What is further surprising for us is the stand taken by the Government before the Tribunal. It appears, learned counsel for the State showed to the Tribunal copies of two letters addressed to the appellant by the Chief Secretary. The first letter was dated June 8, 1984 purporting to intimate the appellant about the gist of confidential report which we will presently consider. The second letter was dated May 2, 1986 which was obviously after the appellant filed the writ petition in the Bombay High Court. It was filed on March 20, 1986. The second letter, therefore, ought to have been totally excluded from consideration.

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"Even on the merits, the appellant appears to have a good case. The report said to have been communicated under the first letter obviously does not indicate anything against the appellant. It reads as follows: -

"He is serious, intelligent and a quiet type of officer and that he took interest in group discussions."

It however states that the appellant would not freely mix with his fellow probationers and he had a marked inferiority complex which had on occasion led to some problems. We do not find anything adverse in these remarks. He has been assessed as a serious, intelligent and quiet type of officer. He took interest in group discussions. These are indeed the best qualities of any officer. The inferiority complex attributed to the appellant, in that report cannot outweigh those good qualities. It is more often the superiority complex that causes harm to the public and not the inferiority complex."

13. The applicant contends that he has been allowed senior/scale in the IAS by the Supreme Court notwithstanding his record and, therefore, the same record could not constitute a ground for his supersession in the matter of seniority by Respondent No.5. We are unable to agree with this argument. The point at issue in the writ petition filed by the applicant in the Bombay High Court which was subsequently transferred to the Bombay Bench of this Tribunal was one of granting senior time scale by the State Government. Allowing the appeal of the applicant, what the Supreme Court held was that there was nothing adverse which would warrant denial of senior time scale to the applicant and, therefore, his appeal was allowed by the Hon'ble Supreme Court. The point at issue in the present application is one of inter-se seniority based on relative assessment of the applicant and Respondent No.5 in the Academy and, therefore, the argument that since the applicant has been

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allowed the senior time scale, his inter-se seniority vis-a-vis Respondent No.5 cannot be disturbed, does not hold ground.

14. The last contention of the applicant is that at no stage he had been communicated either by the Government of India or the Government of Maharashtra anything whatsoever concerning his position in the gradation list. However, he had seen his name in the Gradation List of the IAS Officers borne on the cadre of Maharashtra State as on 1st January, 1985 wherein his name was placed at Sl. No.283 and that of Respondent No.5 at Sl. No.284 and he had no grievance in respect of the said list. However, subsequently he saw another Gradation List of the IAS Officers borne on the cadre of Maharashtra State as on 1st January, 1986 wherein his name was shown at Sl. No.285 and that of Respondent No.5 at Sl. No.284. The applicant further asserts in his application that he was forced to conclude that "there is a deep-rooted design to harm the applicant by concealing the gradation list, and, thereby preventing the applicant from challenging it in a legal forum ....."

15. We find from a perusal of the Civil List of The Indian Administrative Service as on 1-1-85 issued by the Department of Personnel and Training, Ministry of Personnel and Training Administrative Reforms and Public Grievances and Pension, Government of India on 8.3.1985 (Printed by the Manager, Government of India Press, Nasik) that whereas the name of the applicant was shown at Sl. No.283 in the Maharashtra Cadre, the name of Respondent No.5 was shown at Sl. No.284 in the same Cadre; but there is an asterisk mark against Sl. No. 277 to 294 who are all direct recruits of the 1982 and 1983 years of allotment and this asterisk mark carries a reference indication "Inter-se seniority not yet final". It is thus obvious that in the 1985 Gradation List, inter-se seniority of the applicant with reference to Respondent No.5 was shown only on a

provisional basis and the applicant cannot rest his claim on the Gradation List of 1985. In the Gradation List of the Indian Administrative Service as on 1-1-86 issued by the Department of Personnel and Training, Government of India, in the State Cadre of Maharashtra, the name of respondent No.5 is shown at Sl.No.285 and that of the applicant at Sl. No.286 and there is no indication of the said seniority being provisional. The Civil Lists are published every year and these are priced publications available from the Controller of Publications. The contention of the applicant, as the averment in his application would appear to suggest, that there was something mysterious or surreptitious in the manner in which these Gradation Lists were issued, does not call for any scrutiny and has to be dismissed as such.

16. In view of the above discussion, we do not find any merit in the various contentions raised by the applicant in O.A. 1283/88 and M.P. 2087/88. In so far as M.P. 2088/88 is concerned, a prayer has been made for direction to the respondents not to evict the applicant from room No.101, Maharashtra Sadan, Copernicus Marg, New Delhi. The said relief does not flow out of the relief claimed in the main O.A. The M.P. is, therefore, misconceived and not maintainable. Accordingly, O.A. 1283/88 along with M.P.s 2087/88 and 2088/88 is dismissed with no order as to costs.

*kaushal kumar*

(KAUSHAL KUMAR)  
MEMBER(A)

*amitav*

(AMITAV BANERJI)  
CHAIRMAN.